ORIGINAL

Bell Atlantic
1300 I Street N.W.
Suite 400W
Washington, DC 20005

Fran Folgner
Staff Manager - Federal Regulatory Filings
(202) 336-7890
Fax (202) 336-7858

EX PARTE OR LATE FILED

Bell Atlantic

July 8, 1999

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: ***CC Docket 94-129 - Slamming***

Dear Ms. Salas,

Attached is a letter to Glenn Reynolds, Acting Chief – Enforcement Division from Marie Breslin – Bell Atlantic regarding the above-referenced matter. As required by the Commission's rules, I am enclosing an original and one copy of the letter for inclusion in the record of the above-captioned proceeding.

Sincerely,

Fran Folgner

Attachments

cc: G. Reynolds
D. Attwood
L. Strickling
R. Atkinson
M. Seifert
C. Heitkamp

Bell Atlantic
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005

Marie T. Breslin
Director
Federal Regulatory
(202) 336-7893
(202) 336-7866 (Fax)

July 8, 1999

EX PARTE

Mr. Glenn Reynolds
Acting Chief-Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Reynolds:

RE: CC Docket No. 94-129

This written ex parte is being filed on behalf of Ameritech, Bell Atlantic, BellSouth, Cincinnati Bell, GTE, SBC and US West.

Attached is an alternative carrier Slamming Resolution Center proposal developed by these LECs in response to the IXCs petition for waiver to establish a Third Party Administrator. The document provides a summary level overview of the LECs' proposal and benefits of our recommendation. Also attached is a white paper that more fully describes the LECs' position with regard to the IXCs' proposal.

Please call me if you have any questions about this filing.

Sincerely,

Marie Breslin

Attachment

cc: Magalie Roman-Salas
D. Attwood
L. Strickling
R. Atkinson
M. Seifert
C. Heitkamp

FCC Slamming Liability Rules
ILEC Proposed Alternative to IXC's Third Party Administrator (TPA)

Introduction

The ILECs have met several times with the IXCs to further the ILEC's understanding of, and express their concerns with, the TPA proposal filed with the FCC on March 31, 1999. Based on their strong desire to see consumers, and the industry as a whole, relieved of the fraudulent practice of intentional unauthorized carrier changes, the ILEC's offer an alternative proposal to the IXCs' TPA.

The alternative structure proposed below is one designed to work largely within the existing (stayed) FCC liability rules and one that can be implemented by participating carriers in a relatively short period of time (i.e., within 3 months of adoption).

ILECs believe the currently stayed FCC liability rules will bring about a rapid end to the intentional slams that have plagued the long distance toll industry and are now occurring in the intrastate and local markets. For that reason, the ILECs cannot endorse the creation of the full-service TPA structure proposed by the IXCs. The complex, costly structure endorsed by the IXC "Joint Parties" is one that assumes a continued level of slamming and one that could result in TPA-based compliance becoming a "cost of doing business" for slammers.

ILECs Alternative - Carrier Slamming Resolution Center (SRC)

Under the ILEC alternative proposal, any carrier who "opts-in" to the SRC would be agreeing to have the SRC act on its behalf to fulfill its obligations under the existing FCC liability rules as Authorized or Alleged Unauthorized Carrier. The SRC would perform the following functions:

- facilitate a timely, neutral and binding carrier-to-carrier determination of whether a consumer was slammed

- perform carrier-to-carrier revenue settlement (i.e., financial clearinghouse) functions to facilitate consumer refunds

ILECs believe this alternative structure cures the more costly, problematic aspects of the FCC's liability rules and at the same time retains the pro-consumer elements of the existing, stayed rules designed to eliminate the economic incentive for carriers to engage in slamming.

Establishment of the two SRC "core functions" does not preclude carriers contracting with the SRC for additional, optional services such as the "front office" customer call center proposed by the IXCs.

The ILECs alternative SRC is designed to be a voluntary, neutral entity established to facilitate the "back office" carrier-to-carrier compliance aspects of the FCC's liability rules. The proposed SRC would benefit consumers by:

- operating on a voluntary basis, subject to the same rules applicable to non-SRC participating companies to ensure equal, non-discriminatory treatment of all consumers

- preserving the presumption in stayed FCC liability rules that a consumer who alleges a slam, has been slammed and is entitled to an immediate adjustment of the slammer's charges

- resolving disputes regarding ALL types of alleged slams (local, state and interstate) for member companies

- eliminating need for extensive changes to existing IXC/LEC PIC change processes and procedures and, therefore, facilitating timely implementation

- recognizing and retaining consumers right/desire to initially bring their complaint to any party to the transaction without forfeiting legal rights/remedies

- facilitating final carrier-to-carrier resolution of the dispute within current FCC prescribed timeframe (i.e., 30 or 90 *calendar* days)

- making carrier-to-carrier dispute process transparent to consumers

- ensuring economic incentives are eliminated up-front for carriers who engage in intentional slamming by not interfering with the rights of billing entities (carriers or their agents) to recourse or suspend payment of charges prior to a slamming determination being made

- treating all participating carriers the same, that is, not exempting participating small carriers, for the purpose of SRC cost support/funding, since a disproportionate percentage of slams occur within the small carrier segment

- avoiding the establishment of a complex, full service industry structure that could result in institutionalizing slamming as a cost of doing business

The attached white paper elaborates further on the ILEC position on the IXCs proposed Third Party Administrator (TPA).

ILEC POSITION ON TPA

I. Threshold Issues Still Unresolved

Over the past several months, the ILEC[1] working group has met with the Interexchange Carriers (IXCs) in an attempt to determine whether some form of third party administrator arrangement could be agreed upon that would be beneficial to everyone. However, after several meetings, the third party administrator plan proposed by the IXCs (referred to herein as the "TPA") has not changed materially from the third party administrator plan proposed in the Joint Petition[2]. There is still disagreement or simply no substantive information on the same threshold issues. For example, at the first meeting, ILECs pointed out that, while the TPA purported to be voluntary, it really did not appear to work that way. It was made clear at that meeting that ILECs would not support any third party administrator arrangement that was not voluntary. In addition, the IXCs are still insisting that ILECs make no change to customer bills until a slamming determination has been made. Such a requirement is in conflict with the terms and conditions of existing IXC/ILEC billing contracts, is inconsistent with the requirement of the slamming rules and has been opposed by ILECs.

Another major stumbling block is the fact that there is still no firm estimate of cost of the proposed TPA or any agreed method of funding. The IXCs have at various times suggested that a TPA may cost five, fifteen, or thirty million dollars, but no firm estimate has ever been provided. Additionally, there has been no detailed proposal as to how initial start-up and ongoing costs are to be funded, other than the suggestion that there might be annual assessments based on revenue. The proponents of the TPA have said that smaller carriers are to be exempt from the assessments. Thus, the larger IXCs and the ILECs would be subsidizing TPA participation for the smaller carriers, a situation that is not acceptable to ILECs.

To date, these threshold issues remain unresolved.

II. Slamming Liability Rules

For the reasons stated above, the consensus of the ILEC working group is that the FCC's slamming rules should be allowed to go into effect as quickly as possible to take the profit out of slamming and to significantly decrease, if not completely eliminate, intentional slamming. There is a general expectation that the FCC must clarify the slamming rules in its Order on Reconsideration to take care of the notice problem.[3] The ILEC working group urges the Commission to amend the rules to provide that the exonerated carrier shall have the right to rebill and collect its own charges when a

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[1] The ILEC working group includes Ameritech, Bell Atlantic, BellSouth, Cincinnati Bell, GTE, SBC and US West and this Position paper represents the consensus of the group.

[2] *Joint Petition for Waiver* filed on March 30, 1999 in CC Docket 94-129.

[3] The "notice problem" is the fact that the rules do not provide for notice to all affected carriers in every instance.

determination is made that no slam occurred and that the authorized carrier does not have a duty to bill those charges. Individual ILECs also submitted other issues for reconsideration and clarification and the group also expects that the Commission will address those issues in the Order on Reconsideration. Once the FCC has issued its Order on Reconsideration, the ILEC working group believes that the Court should lift the stay and allow the liability rules to go into effect.

III. Acceptable Alternative Plan

The ILEC position does not rule out establishment of a voluntary, neutral organization that better addresses the needs of consumers and the entire telecommunications industry. The ILEC Proposed Alternative to the IXC's TPA, designated the Slamming Resolution Center (SRC) to distinguish it from the TPA, is designed to work largely within the existing (stayed) FCC liability rules. It is a plan that can be implemented by participating carriers in a relatively short time period (i.e., three months). Ideally, that plan could be developed and implemented by the time the court stay is lifted, without delaying that process. The ILEC working group would not oppose an FCC stay of the rules being included in the Order on Reconsideration to allow interested parties to establish a voluntary third party administrator plan, so long as the stay was for no longer than three months and that three months begins to run on the date that the Order is released. A temporary stay for that period of time would give interested parties the opportunity to come forward with a more fully developed proposal and have an operational plan in place by the time the court would consider briefs and lift the stay to allow the rules to go into effect. In order for ILECs to support the formation of any third party administrator arrangement (and for some ILECs to consider joining it), the following criteria would have to be met:

A. An acceptable alternative plan must be truly voluntary.

The third party administrator could perform the duties that would otherwise be required of its members as authorized carriers under the Slamming Rules, but cannot change the role of ILEC as executing carrier or the role of non-member authorized carriers. Any waiver granted the third party administrator plan members should not impose additional duties on ILECs functioning as executing carriers or require executing carriers to waive tariffed charges for PIC changes or other actions. The Commission specifically noted in Paragraph 56 of the Slamming Order that the third party administrator should ensure that any applicable change charges were paid.

B. An acceptable alternative plan must not change a customer's rights under the Slamming Rules.

This requirement was stated in slightly different terms in Paragraph 56 of the Slamming Order, where the Commission indicated that it would be inclined to grant a waiver only if it was satisfied that: "any such neutral entity would fulfill the obligations imposed by our rules with regard to liability, in the timeframes specified in the rules." The proposed TPA does not meet this requirement because it does not provide for, and in

fact seeks to prohibit, the immediate crediting of slamming charges. Paragraph 42 of the Slamming Order makes it clear that the customer that reports a slam is to have all charges for the first thirty days removed from its bill immediately, prior to any investigation being conducted into the validity of the slamming claim. Such requirement is also clear in §64.1180 (e)(1) of the rules, which requires the authorized carrier to place on the customer's bill an amount equal to the amount previously credited, when a determination is made that no slam occurred. Clearly, if it were intended that no credit would be made until after the slamming determination was made, there would be no reason for the rule to require any rebilling of the amounts previously credited.

Thus, under the rules, a customer that has not paid the bill at the time it reports a slam is to have all of the slamming charges removed from the bill immediately, subject to rebilling if a later determination is made that no slam occurred. In the "unpaid" situation, the action that ILECs currently take pursuant to the billing contracts of removing the alleged slamming charges and recoursing those charges back to the carrier is entirely consistent with the rules. Such action, whether performed by the ILEC under a billing contract or by an alleged slamming carrier that performs its own billing function, provides immediate relief for the slammed consumer. The proposed TPA plan would deny that relief for approximately six to seven weeks.[4] Thus, the TPA as proposed does not meet the criteria set out in the Slamming Order in the situation where the customer has not yet paid the bill.

Nor does the TPA propose to meet the same time frame[5] in the situation where the customer has paid some charges before reporting the slam. The schedule proposed by the TPA is that it will "immediately" provide notice to the slamming and authorized carriers of the slam, but does not define "immediately," leaving the actual time period allowed for the notification to the vendor that is eventually selected as the TPA. Since the initial time frame to get notice to the carrier is not defined, no precise comparison with the timeframes specified in the rules can be made. However, one can compare the timeframes dating from the date that the unauthorized carrier receives notice of the slam. Under the rules, the alleged unauthorized carrier has ten days from the date of receiving a

[4] In order to make an accurate comparison of the time frames for TPA handling of a slamming claim with the timeframes under the rules, one would have to start at the same point in the process. Since the processes are not the same, no really accurate comparison of the time required for resolution of slamming claims can be made. However, since the TPA does not specify the time frame for sending notice, the most comparable date for a start point is the date the alleged slamming carrier receives the demand letter under the rules and/or notice of slam by the TPA. From that point, the TPA would add the four weeks (20 business days) that the TPA gives the slamming carrier for response time, plus the two weeks (10 business days) that the TPA reserves for its decision making time. Thus, at a minimum, it is at least six to seven weeks before the customer gets the charges removed from its bill or that a demand is sent to the slamming carrier for a refund of money paid on slamming claims handled by the TPA. By contrast, under the FCC's slamming rules, the slamming carrier only has 10 days to present proof of verification (if paid) and 30 days to provide that proof (if not paid). The customer will have immediate relief by removal of the charges from the bill by the ILEC (if the ILEC bills for the slamming carrier) where the charges have not been paid.

[5] The comparison of timeframes has been blurred somewhat by the TPA's statement of timeframes in **business** days, rather than calendar days and by the fact that the TPA only assigns timeframes a portion of the process.

request for verification to provide that verification or a full refund of all amounts paid by the customer to the authorized carrier.

The TPA proposal, however, allows the accused carrier approximately four weeks (20 business days) to provide any verification evidence and allows the TPA another two weeks (10 business days) to make the slamming determination before even making demand upon the unauthorized carrier for the refund in a situation where a slam has occurred. Clearly, some time is required for the transmittal of the request for refund to the slamming carrier and some additional time must be allowed to see if the slamming carrier is going to hand over the money to the authorized carrier. The TPA proposal does not specify what time is allowed for the transmittal of the demand (it may be sent concurrently with the notice of slamming determination) or for the receipt of the refund, so it is impossible to make an exact comparison with the more precise schedule set forth in the rules.

C. There must be a detailed plan for funding, with the slamming carriers ultimately paying most, if not all of, the cost of an acceptable alternative plan.

The stated purpose of the slamming rules is to take the profit out of slamming. A funding mechanism that places the financial burden of the slamming resolution process on executing carriers and authorized carriers does not serve that purpose. The primary source of funding for an acceptable third party administrator plan should be the recovery of the cost of handling a slam that is recovered from the slamming carriers. The remainder of the funding, if any, should be borne by the authorized carriers that avoid duties under the rules in proportion to the number of complaints handled by the administrator that otherwise the authorized carrier would have been required to handle. No ILEC can make the economic evaluation necessary to be able to decide whether to support or join a third party administrator plan without knowing the approximate total cost and how that cost is going to be recovered.

For example, initial funding could be provided by some sort of a deposit of funds or bonding arrangement that guarantees the third party administrator would have immediate access to money from each member carrier to satisfy charges assessed against that member based upon the number of slams handled by the administrator in which the member was either the slamming carrier and/or the authorized carrier. The initial deposit would then be subject to refund after a record is established as to the average number of slamming claims handled by the administrator on a monthly basis involving that carrier, so that after refunds and/or deposits, the amount at the beginning of the subsequent period would equal one and a half times the actual total amount of assessments made against that member as a slamming carrier (and, if necessary, as an authorized carrier) during the initial period. If any member persistently failed to make any necessary deposits to bring its funding account to the required level of one and a half times the amount of assessments made in the prior period of time at the first of each month, that member should be expelled from membership after proper notification and adequate opportunity to cure. An administrator with the ability to draw on member accounts to immediately provide carrier refunds through the clearinghouse would provide some real

value that would certainly encourage ILECs to consider membership in the third party administrator plan.

ILECs are open to suggestion as to better ways to fund an acceptable alternative plan. None of the ILECs in the working group are locked into any particular type of cost recovery mechanism at the present time, but they are absolutely committed to the principle that the costs should be borne by the cost causer to the greatest extent possible. To the extent that the costs are not completely recovered from the slamming carriers, those costs should be borne proportionately by those carriers that benefit most from the existence of the third party administrator arrangement. ILECs are not interested in a plan that is funded by assessments based on total revenue, which would result in ILECs paying a disproportionate share of the cost of the arrangement, as compared to the benefit the ILECs would realize from the third party administrator arrangement.

D. An acceptable alternative plan cannot change provisions of individual ILEC/IXC billing contracts.

As ILECs have explained, this does not mean that the contracts cannot be changed, but the changes should take place in the context of contract negotiations, not via an order issued by the FCC. This issue is, in reality, a question as to which entity is going to suffer the cash flow consequences of not being able to secure payment of a bill for a minimum of six to seven weeks, until the TPA makes its slamming determination. The IXC proposal is in essence that the ILECs remove the charges from the bill, but not recourse the charges back to the IXCs. Thus, the issue is not really an issue as to how the removal of the charges is described to end user customers. ILECs currently advise customers that the charges are being removed, but that if a determination is made that no slam occurred, then the customer will still owe the charges.

The real issue is whether the charges get immediately "recoursed back" to the alleged slamming carrier, so that it is the alleged slamming carrier that loses the value of that money for two months, pending the slamming determination, rather than the ILEC. In most of the ILEC/IXC billing contracts, the word "suspend" is a term of art that means the charges are taken off the bill and immediately "recoursed" back to the IXC. Thus, when that contractual procedure is followed, the IXCs do not collect any money for those charges until after the slamming determination is made because the "recoursed" amounts are deducted from the amount the ILECs pay the IXC for the next increment of billing purchased. The purpose of the slamming rules was to take the financial incentive out of slamming and requiring the charges to be taken off the bill immediately serves that purpose if it is the alleged slamming carrier that suffers the cash flow loss until the slamming determination is made. The IXCs have taken the position that they should not lose the value of the money for that period of time because they may not be guilty. However, their proposal would shift the cash flow loss to the ILECs that bill for them in a situation where no one has even alleged any wrongdoing on the part of the ILEC. There is no justification for the FCC to step in and abrogate the negotiated terms and conditions of existing billing contracts in order to shield alleged slammers from the cash flow burden created by the necessity of resolving slamming complaints. There is even less

justification for abrogating the terms of those contracts to move the cash flow burden to the ILECs, who are not even alleged to be at fault.

E. An acceptable alternative plan's core functions should be limited to making the slamming determination and ensuring that carrier and customer refunds are received.

Under an acceptable alternative plan, the administrator must handle money and perform a clearinghouse function in order to be able to fulfill the duty of ensuring that carrier and customer refunds are received. The Commission expressly stated this requirement in Paragraph 56 of the Slamming Order, as follows:

> If the subscriber pays the slamming carrier, the neutral administrator also would be charged with ensuring that the slamming carrier remits all such amounts to the authorized carrier, as well as reasonable billing and collection expenses and any applicable change charges. The administrator should also ensure that, under appropriate circumstances, the subscriber receives a refund or credit of any amounts paid in excess of what the authorized carrier would have charged, as well as premiums, if applicable. If the administrator fails to collect any amounts from the slamming carrier, it would be responsible for informing the subscriber of his or her rights with respect to charges paid.

Of course, the failure of the administrator to collect the appropriate amounts from the slamming carrier should only occur when the slamming carrier is not a member of the third party administrator plan, if a funding arrangement that allows the administrator to draw on member accounts is in place. Again, the TPA proposal of the IXCs ignores the guidelines set out in the order for an acceptable third party administrator in that the TPA would take no action to actually ensure refunds or credits, but would merely direct the carriers to make such payments. In addition, rather than accepting the Commission's directive that the administrator should ensure that all change charges are paid, the TPA proposal results in a six to seven week delay in payment of those charges and even then seeks to have carrier change charges reduced.

F. An acceptable alternative plan would not attempt to handle all customer contact for carrier selection, PIC freezes, maintenance of a CPNI database, or a database that would allow the TPA to re-rate customer bills.

The creation of an organization to handle those functions would be enormously expensive and would require a huge workforce. There is no justification for expending huge sums of money to duplicate ILEC workgroups, when no problem with the current administration of those functions has been demonstrated.

IV. Conclusion

The ILEC working group has now proposed the SRC as an alternative to the TPA most recently proposed by the IXCs[6]. Further discussions should focus on an acceptable method of funding and the requirements to solicit vendor bids.

[6] There are numerous other issues that have been raised by the IXCs in their most recent proposal that the ILECs either do not understand or with which the ILECs do not agree, but no attempt has been made to address all those issues here.